(1) D.B.CIVIL SPECIAL APPEAL (WRIT) NO.694/2006
(2) D.B.CIVIL SPECIAL APPEAL (WRIT) NO.695/2006
(State of Rajasthan & Ors. Vs. Smt.Manju Kanwar)

DATE OF ORDER:28.05.2007

HON'BLE MR.JUSTICE RAJESH BALIA
HON'BLE MR.JUSTICE BHANWAROO KHAN

Mr.R.P.S.Choudhary, Additional Advocate General
Mr.B.S.Deora, for the respondent

BY THE COURT(PER HON'BLE MR.BALIA J.)

Both these appeal are directed against the judgment of learned Single Judge dated 3.4.2006 & 21.7.2006 respectively, holding that the respondent's husband who was initially appointed as Nakedar in Gram Panchayat, Samdari, was declared surplus on abolition of Octroi and was later on absorbed on the post of Gram Sewak.

After absorption of respondent's husband, the incumbent had died while in service on 23.12.2004.

The widow of the deceased incumbent Samrath Singh had filed these two writ petition, one for claiming the retiral benefits to be computed on the basis of fixation of deceased Samrath Singh in the regular pay scale applicable to Gram Sewak and for considering her application dated 3rd February,

2005 for compassionate appointment for herself filed within two months of the death of the incumbent.

The present appellants had denied the prayer for family pension by taking the last drawn emoluments in the pay scale, on the ground that the respondent's husband was absorbed on a fixed pay scale on honorarium of Rs.1200/- per month and for the same reason the consideration of her application for compassionate appointment was not considered.

These writ petitions have been filed by the widow of late Samrath Singh in respect of two reliefs and both the writ petitions have been allowed by the learned Single Judge.

So far as issue about the fixation of Octroi Nakedar at Rs.1200/- per month as emoluments on honorarium basis, on being absorbed as Gram Sewak after having been declared surplus on account of abolition of Octroi had since been decided by the Division Bench of this Court in Prashant Vohara & Ors. vs. State of Rajasthan & Ors. reported in 2005(1) WLC (Raj.) 264 by holding that it is not a case of giving an appointment afresh but is absorption of a government employee declared surplus. Therefore, his emoluments cannot be less than what he was drawing on the post from where he has been declared surplus by

treating him in contract employment. The status of regular regular employee on previous post remain unaltered. In view thereof the learned Single Judge had allowed the writ petition by considering the appointment of late Samrath Singh in the regular pay scale on regular basis and directed to grant of family pension and other retiral dues on other premises.

Since the denial of family pension was on the ground, which was not sustained by this Court and the relief granted by the learned Single Judge is in consequence of status of the deceased Samrath Singh at the time when he died no interference is called for in D.B.Civil Special Appeal (Writ) No.694/2006 and the same is hereby dismissed.

So far as D.B.Civil Special Appeal (Writ) No.695/2006 is concerned, giving of compassionate appointment to the widow of late Samrath Singh on the suitable post to which she is eligible, as a result of her husband a government employee while died in service, the learned Single Judge has allowed the writ petition by pointing out the only ground on which such application was denied that husband of petitioner was not in the regular appointment and was only appointed on fixed term period. As a consequence of decision given in D.B.Civil Special Appeal (Writ) No.694/2006, this appeal also fails as the

only reason which prevailed with the appellants for not considering the application of Smt.Manju has not been sustained.

Accordingly, D.B.Civil Special Appeal (Writ) No.695/2006 also fails and is hereby dismissed.

(BHANWAROO KHAN) J. **(RAJESH BALIA) J.**

BKS/-